

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 7388 of 1997

with

CRIMINAL MISC. APPLICATION No. 7389 of 1997

with

CRIMINAL MISC. APPLICATION No. 7391 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

CHANDRAKANT R PATEL PARTNER

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MS VALIKARIMWALA APP for Respondent No. 1

MR MC SHAH Advocate for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/11/98

COMMON JUDGEMENT

Heard learned advocates Mr. B.S Patel for the petitioner, Mr. M.C Shah for the respondent no. 2 and learned APP Ms. Valikarimwala for respondent No. 1-State.

2. The parties to these three applications are the same and an identical question of law is involved in all these three applications. These applications are, therefore, disposed of by this common judgment and order.

3. These applications are preferred under Section 482 CrPC against the judgment and order dated 10th August, 1997 passed by the learned Sessions Judge, Nadiad in Criminal Revision Application Nos. 99/95, 98/95 and 100/95 respectively confirming the orders made by the learned Judicial Magistrate, First Class, Nadiad in Criminal Cases Nos. 556/95, 558/95 and 557/95 respectively. The applicant before this Court is one Chandrakant R. Patel, one of the partners in Messrs. Ravjibhai Dahyabhai Patel & Co., who is an accused in above referred criminal cases pending before the learned Judicial Magistrate, First Class, Nadiad. The prosecution in question has been lodged by the Nadiad Municipality through its Octroi Inspector for the commission of offence punishable under Section 125 of the Gujarat Municipalities Act, 1963. The applicant moved applications for discharge, which were rejected by the learned Magistrate under his orders dated 17th June, 1995. Feeling aggrieved, the applicant preferred above referred Criminal Revision Applications Nos. 99/95, 98/95 and 100/95 before the learned Sessions Judge, Kheda which were dismissed under the impugned orders dated 10th August, 1997. Feeling aggrieved, the applicant has preferred the present applications under Section 482 CrPC.

Mr. Raval has relied upon Section 246 of the Gujarat Municipalities Act, 1963 and has contended that the complaints lodged against the applicant were time-barred and the same, therefore, require to be quashed. Proviso to Section 246 of the Gujarat Municipalities Act provides, inter alia, that no prosecution for an offence under this Act or Bye-laws framed thereunder shall be instituted except within six months next after the date of the commission of the offence or, if such date is not known or the offence is a continuing one, within six months next after the commission or discovery of such offence. Mr. Raval has contended that the offence complained of was committed on 2nd December, 1993 and the complaints have been lodged on 4th May, 1995 i.e., long after the expiry of the six months from the date of alleged commission of offence. The complaints, therefore, are not maintainable and deserve to be quashed. In support of his contention, he has relied upon the judgment of this Court in the matter

of Prasannakant Nilkanth Dave v. P. Bachu Narsi & Anr., [XXII (1981) GLR 381]. In the said judgment, the Court has on facts held that the actual offence was not known by the Octroi Inspector upto 23rd December, 1976 and, therefore, that would be starting point of limitation under Section 246 (1) of the Gujarat Municipalities Act.

The applications are contested by Mr. M.C Shah. Mr. Shah has submitted that on facts, though the offence was committed on 2nd December, 1993, it was not known that it was the applicant herein who had committed the offence in question, and therefore, it would be a matter of evidence as to the date on which commission of offence by the applicant became known to the Municipality and the proceedings cannot be dropped at this stage. He has further contended that the present applications under Section 482 CrPC are not maintainable. He has contended that the applicant had already availed of the remedy of revision under Section 397 CrPC by preferring revision applications before the learned Sessions Judge, Nadiad. The present applications under Section 482 CrPC are, therefore, in the nature of second revision against the orders made by the learned Sessions Judge, Nadiad, which is expressly barred under Section 397 (3) CrPC. In support of his contention, he has relied upon the judgment of the Supreme Court in the matter of Deepti alias Arati Rai vs. Akhil Rai & Ors., [(1955) 5 SCC 751]. In the said matter, the Court has held that, "....It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code." This contention has been answered by Mr. Raval by relying upon another Supreme Court judgment in the matter of Krishnan & Anr. v. Krishnaveni & Anr., [AIR 1997 SC 987]. In the said judgment, in paragraph 9, the Court held that, "the prohibition under Section 397 (3) on revisional power given to the High Court would not apply when the State seeks revision under Section 401." In paragraph 10, it is held that, "Ordinarily, when revision has been barred by Sec. 397 (3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Sec. 397 (1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Sec. 397 (3) or Sec. 397 (2) of the Code.So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied

with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Sec. 397 (1) read with Sec. 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings."

On perusal of the above two judgments of the Supreme Courts in the matters of Deepti alia Arati Rai {Supra} and Krishnan {Supra}, it is apparent that ordinarily second revision after dismissal of the first one by the Sessions Court is not maintainable and inherent power of the High Court under Section 482 CrPC cannot be utilised for exercising power expressly barred by the Code. It is only in the rare cases where the second revision has been sought by the State and where the Court finds that there is a grave miscarriage of justice or abuse of the process of the Court, the inherent powers under Section 482 CrPC may be utilised to meet the ends of justice.

In the present case, the second revision after the dismissal of the first revision by the Sessions Court is not sought by the State and is sought by the accused, and secondly, it cannot be said that there is miscarriage of justice or abuse of process of the Court which would induce this Court to utilise its inherent powers under Section 482 CrPC. Besides, applicant has not even raised the contention of the complaints being time-barred in view of Section 246 of the Gujarat Municipalities Act, 1963 before the learned Magistrate or before the learned Sessions Judge.

In view of the above facts, the present applications preferred under Section 482 CrPC, after the dismissal of the revision applications by the learned Sessions Judge are not maintainable and require to be dismissed.

Applications are accordingly dismissed. Rule nisi issued in each of the applications is discharged. There shall be no order as to costs.

Prakash*